IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO. 2411 OF 2004
IN
WRIT PETITION NO.6879 OF 2004

Cosmos Co-Operative Bank Ltd. ..Petitioner

Vs.

Shailesh Madhav Joshi ..Respondent

And

Shailesh Madhav Joshi ..Applicant

....

Mr.Jayprakash Sawant for Applicant/Respondent
Mrs.Meena Doshi for Petitioner

....

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 15,2005

P.C.:

1. Heard the learned counsel for the respective parties. In Reference No.CGIT/25/2001 the Central Govt. Industrial Tribunal has passed an Award on 6.7.2004 and directed reinstatement of the applicant-employee. The said Award has been challenged in W.P.No. 6879 of 2004 by the employer-bank. While granting Rule, interim relief in terms of prayer clause (b) on the condition of the deposit of backwages was also granted by this Court vide order dated 23.8.2004. The applicant has not

yet been gainfully employed and hence, this application for the benefits of Section 17-B of the Industrial Disputes Act, 1947. The applicant has prayed for said benefits from 6.7.2004.

2. The employer-bank has filed affidavit-in-reply and alleged that the applicant is gainfully employed with the D.Y.Patil Education Trust and he is also attending to the personal work of Mr.D.Y.Patil but he is being paid his remuneration in cash. The applicant has filed rejoinder and denied that he is working with the said trust and that he is being paid his remuneration in cash or on voucher basis.

3. When the Reference was being adjudicated before the Tribunal the case of the Petitioner was that the applicant-employee had tendered his resignation and there was no allegation against him. The Tribunal has discarded the bank’s contention that the employee had submitted his resignation and left the bank voluntarily. Under such circumstances, the bank has to either reinstate the applicant-employee or may give the benefits available under Section 17-B of the Industrial Disputes Act. His claim for either of the benefits cannot be discarded at this juncture. Mrs.Doshi, the learned counsel relied upon the decision of this Court in the case of **Indiana Engineering Works (Bombay) Pvt. Ltd. Vs. The**

Presiding Officer, 5th Labour Court & Ors. 1995 II CLR 890. This Court held, inter alia, that in the event the employer successfully discharged the burden of explaining that the employee was gainfully employed, the onus thereafter shifted upon the workman and he was obliged to give full particulars of his gainfully employement, to the labour Court when it was adjudicating the dispute. In the instant case, the allegations made by the bank regarding gainful employment have been denied by way of affidavit and therefore, the claim cannot be discarded.

4. The application therefore, succeeds and the same is hereby allowed in terms of prayer clause (a) and in case the employer-bank is not intending to reinstate the applicant pending the writ petition.

[B.H.MARLAPALLE,J.]